

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CONNIE F.,

Plaintiff,

Case No. C18-1124 RBL

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER AFFIRMING DENIAL OF BENEFITS

I. INTRODUCTION

This matter is before the Court on Plaintiff's Complaint (Dkt. 4) for review of the Commissioner of Social Security's denial of her application for disability insurance ("DI") and supplemental security income ("SSI") benefits. This is the second time this matter has been before the Court. *See Admin. Record ("AR") (Dkt. 9) at 1077-79.*

Plaintiff has severe impairments of “recurrent herpatic [sic] rash (also diagnosed as shingles and recurrent herpes simplex virus), and degenerative disc disease.” *Id.* at 1795. In 2012 and 2013, Plaintiff applied for DI and SSI benefits, originally alleging disability as of December 12, 2005. *See id.* at 79, 196-200, 206-14. Plaintiff later amended her disability onset date to November 9, 2006. *Id.* at 1021, 1792. Plaintiff’s applications were denied on initial review and on reconsideration. *Id.* at 79-87, 91-110.

1 At Plaintiff's request, Administrative Law Judge ("ALJ") Ruperta Alexis held a hearing
2 on Plaintiff's claims. *Id.* at 42-78. On April 25, 2014, ALJ Alexis issued a decision finding
3 Plaintiff not disabled and denying her claim for benefits. *Id.* at 28-36. The Appeals Council
4 denied review. *Id.* at 11-14. Plaintiff then sought review in this Court. *See id.* at 1097-1100.

5 On October 12, 2016, based on the parties' stipulation, U.S. District Judge Robert Lasnik
6 issued a decision reversing and remanding the ALJ's decision for further administrative
7 proceedings. *Id.* at 1081-82. Judge Lasnik ordered that the ALJ on remand must update and
8 reevaluate the medical evidence, reevaluate Plaintiff's symptom testimony, reassess Plaintiff's
9 residual functional capacity ("RFC") and ability to perform other work, offer Plaintiff the
10 opportunity for a new hearing, and conduct further proceedings as necessary to reevaluate the
11 disability determination.¹ *Id.*

12 On remand, ALJ M.J. Adams held a second hearing. *Id.* at 1017-59. On May 14, 2018,
13 ALJ Adams issued a decision again finding that Plaintiff was not disabled and denying her claim
14 for benefits. *Id.* at 1792-1806. The Appeals Council did not assume jurisdiction, so the ALJ's
15 decision became the Commissioner's final decision. *See* 20 C.F.R. §§ 404.984(d), 416.1484(d).

16 Plaintiff argues that ALJ Adams erred in finding that Plaintiff's alleged somatoform
17 disorder was not a severe impairment, and in discounting Plaintiff's subjective symptom
18 testimony. Pl. Op. Br. (Dkt. 24) at 1. Plaintiff asks the Court to remand this matter for further
19 administrative proceedings. *Id.*

20 **II. DISCUSSION**

21 Pursuant to 42 U.S.C. § 405(g), the Court may set aside the Commissioner's denial of

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23 ¹ Shortly before seeking the Court's review of the Commissioner's decision, Plaintiff filed a new
application for SSI benefits. *See id.* at 1230-38. On remand, the Appeals Council consolidated the new
application with Plaintiff's 2012 and 2013 applications. *Id.* at 1094-95.

1 social security benefits if the ALJ's findings are based on legal error or not supported by
2 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th
3 Cir. 2005). The ALJ is responsible for determining credibility, resolving conflicts in medical
4 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
5 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
6 neither reweigh the evidence nor substitute its judgment for that of the ALJ. *See Thomas v.*
7 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

8 **A. The ALJ Did Not Harmfully Err in Finding That Plaintiff's Somatoform Disorder
Was Not A Severe Impairment**

9 Plaintiff contends that the ALJ erred in finding that her somatoform disorder was not a
10 severe impairment. Pl. Op. Br. at 2-8. At step two of the disability evaluation, ALJ Adams
11 determined that Plaintiff had a medically determinable impairment of somatoform disorder, but
12 found that it did not cause more than minimal limitation in Plaintiff's ability to perform basic
13 work activities. AR at 1796. ALJ Adams noted that Douglas Robinson, M.D., diagnosed
14 Plaintiff with somatization disorder, but found that Plaintiff had "no permanent impairment" of
15 her mental functioning. *Id.* ALJ Adams further noted that the record showed "scant treatment
16 for mental health concerns." *Id.*

17 The step two analysis is a gatekeeping device used to screen out weak claims. *See Buck*
18 *v. Berryhill*, 869 F.3d 1040, 1048 (9th Cir. 2017) (citing *Bowen v. Yuckert*, 482 U.S. 137, 146-47
19 (1987)). At step two, the ALJ must determine if the claimant suffers from any impairments that
20 are "severe." 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). "An impairment or
21 combination of impairments may be found 'not severe only if the evidence establishes a slight
22 abnormality that has no more than a minimal effect on an individual's work.'" *Webb v.*
23 *Barnhart*, 433 F.3d 683, 686-87 (9th Cir. 2005) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1290

1 (9th Cir. 1996)). As long as the claimant has at least one severe impairment, the disability
2 inquiry moves on to step three. *See* 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

3 Plaintiff has failed to show that the ALJ harmfully erred at step two in finding that
4 Plaintiff's alleged somatoform disorder was not a severe impairment. *See Ludwig v. Astrue*, 681
5 F.3d 1047, 1054 (9th Cir. 2012) (holding that the party challenging an administrative decision
6 bears the burden of proving harmful error) (citing *Shinseki v. Sanders*, 556 U.S. 396, 407-09
7 (2009)). The record contains indications of somatization. *See, e.g.*, AR at 314, 478, 502. But
8 the record also contains evidence that Plaintiff's alleged somatoform disorder does not impair
9 her ability to work. *See, e.g., id.* at 108, 119, 1651-66. As ALJ Adams noted, Dr. Robinson
10 opined that Plaintiff had "no permanent impairment" from her somatization disorder, and was
11 "capable of normal activities, including gainful employment, without any restrictions despite
12 physical complaints that suggest otherwise." *Id.* at 1666. Plaintiff has failed to show that ALJ
13 Adams reached an unreasonable conclusion in agreeing with Dr. Robinson and, accordingly, has
14 failed to show that ALJ Adams erred in finding that Plaintiff's somatoform disorder was not a
15 severe impairment. *See Thomas*, 278 F.3d at 954; *see also Dattilo v. Berryhill*, --- F. App'x ---,
16 2019 WL 2152838, at *1 (9th Cir. May 16, 2019).

17 **B. The ALJ Did Not Harmfully Err in Discounting Plaintiff's Symptom Testimony**

18 Plaintiff contends that the ALJ erred in rejecting her subjective symptom testimony. Pl.
19 Op. Br. at 9-15. The Ninth Circuit has "established a two-step analysis for determining the
20 extent to which a claimant's symptom testimony must be credited." *Trevizo v. Berryhill*, 871
21 F.3d 664, 678 (9th Cir. 2017). The ALJ must first determine whether the claimant has presented
22 objective medical evidence of an impairment that "'could reasonably be expected to produce the
23 pain or other symptoms alleged.'" *Id.* (quoting *Garrison v. Colvin*, 759 F.3d 995, 1014-15 (9th

1 Cir. 2014)). At this stage, the claimant need only show that the impairment could have caused
2 some degree of the symptoms; she does not have to show that the impairment could be expected
3 to cause the severity of the symptoms alleged. *Id.* The ALJ found that Plaintiff met this step
4 because her medically determinable impairments could have caused the symptoms she alleged.
5 AR at 1799.

6 If the claimant satisfies the first step, and there is no evidence of malingering, the ALJ
7 may only reject the claimant’s testimony ““by offering specific, clear and convincing reasons for
8 doing so. This is not an easy requirement to meet.”” *Trevizo*, 871 F.3d at 678 (quoting
9 *Garrison*, 759 F.3d at 1014-15). In evaluating the ALJ’s determination at this step, the Court
10 may not substitute its judgment for that of the ALJ. *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir.
11 1989). As long as the ALJ’s decision is supported by substantial evidence, it should stand, even
12 if some of the ALJ’s reasons for discrediting a claimant’s testimony fail. *See Tonapetyan v.*
13 *Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001).

14 ALJ Adams found that Plaintiff’s “statements concerning the intensity, persistence and
15 limiting effects of [her] symptoms are not entirely consistent with the objective medical and
16 other evidence.” AR at 1799. ALJ Adams reasoned that the objective medical evidence did not
17 support the extreme nature of Plaintiff’s allegations. *Id.* at 1799-1800. ALJ Adams reasoned
18 that Plaintiff’s testimony was inconsistent with her activities. *Id.* at 1800. And ALJ Adams
19 reasoned that Plaintiff had exaggerated her symptoms. *Id.* at 1800-01.

20 ALJ Adams’s first reason for rejecting Plaintiff’s symptom testimony withstands
21 scrutiny. “While subjective pain testimony cannot be rejected on the sole ground that it is not
22 fully corroborated by objective medical evidence, the medical evidence is still a relevant factor
23 in determining the severity of the claimant’s pain and its disabling effects.” *Rollins v.*

1 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (citing 20 C.F.R. § 404.1529(c)(2)); *see also*
2 *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 599-600 (9th Cir. 1999) (affirming ALJ's
3 rejection of claimant's testimony based on inconsistencies between his subjective complaints and
4 the objective medical evidence). ALJ Adams compared the medical evidence to Plaintiff's
5 subjective complaints, and sufficiently identified inconsistencies that supported rejecting
6 Plaintiff's testimony. ALJ Adams noted, for example, that Plaintiff's providers have regularly
7 observed normal gait, motor strength, and range of motion. *See* AR at 514, 543, 560, 759, 933,
8 964, 1412-14. ALJ Adams reasonably determined that these benign findings were inconsistent
9 with Plaintiff's claims that she could only stand for a few minutes at a time and could lift no
10 more than five pounds. *See id.* at 57, 1040, 1799-1800. Thus, ALJ Adams did not err in
11 rejecting Plaintiff's symptom testimony based on inconsistencies with the objective medical
12 evidence. *See Morgan*, 169 F.3d at 599-600.

13 ALJ Adams's second reason for discounting Plaintiff's symptom testimony also
14 withstands scrutiny. An ALJ may discount a claimant's symptom testimony when it is
15 inconsistent with the claimant's general activity level. *See Molina v. Astrue*, 674 F.3d 1104,
16 1112-13 (9th Cir. 2012); *Lingenfelter v. Astrue*, 504 F.3d 1028, 1040 (9th Cir. 2007). As ALJ
17 Adams noted, Plaintiff managed to complete vocational rehabilitation and an internship during
18 her alleged disability period. AR at 726-27, 731, 1800. Plaintiff attended community college
19 courses and carried a backpack in September 2009 and January 2010. *Id.* at 718, 721, 1800.
20 ALJ Adams reasonably concluded that these activities contradicted Plaintiff's testimony that she
21 could not be on her feet for more than five minutes at a time, and could not lift more than five
22 pounds. ALJ Adams thus did not err in discounting Plaintiff's symptom testimony based on the
23 fact that it was inconsistent with Plaintiff's general activity level.

1 ALJ Adams's third reason for rejecting Plaintiff's symptom testimony survives review, as
2 well. An ALJ may reject a claimant's subjective complaints where the record demonstrates that
3 she has exaggerated their severity. *See Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1225 (9th
4 Cir. 2010); *see also Schow v. Astrue*, 272 F. App'x 647, 651 (9th Cir. 2008) (noting that the
5 existence of "affirmative evidence suggesting malingering vitiates the clear and convincing
6 standard of review") (internal quotation marks omitted). ALJ Adams noted multiple instances in
7 which medical professionals indicated that Plaintiff was exaggerating her symptoms. *Id.* at 1800.
8 Functional capacities evaluators noted that Plaintiff gave inconsistent effort during a 2009
9 evaluation. *Id.* at 1379. Plaintiff showed "give-way" weakness during a medical evaluation, and
10 reported tenderness at all 18 fibromyalgia tender points, as well as the control locations. *Id.* at
11 1641, 1644. ALJ Adams reasonably interpreted this evidence as showing signs of exaggeration,
12 and justifiably rejected Plaintiff's symptom testimony as a result. *See Turner*, 613 F.3d at 1225.

13 In sum, ALJ Adams gave clear and convincing reasons to reject Plaintiff's symptom
14 testimony. Plaintiff has consequently failed to show that the ALJ harmfully erred. Because the
15 Court has found that the ALJ did not err, it need not consider Plaintiff's contention that the ALJ
16 erred in assessing Plaintiff's RFC, or in performing step five of the disability evaluation process.

17 **III. CONCLUSION**

18 For the foregoing reasons, the Commissioner's final decision is AFFIRMED and this
19 case is DISMISSED with prejudice.

20 DATED this 10th day of July, 2019.

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23 Ronald B. Leighton
United States District Judge